



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2022-01; FAR Case 2021-007; Item III; Docket No. FAR-2021-0007, Sequence No. 1]

RIN 9000-AO25

Federal Acquisition Regulation: Maximum Award Price for Certain Sole Source Manufacturing Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 that modified the Small Business Act maximum award price for manufacturing contracts to \$7 million.

DATES: Effective [Insert date 30 days after date of publication in the *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or by email at michaelo.jackson@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact

the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2022-01, FAR Case 2021-007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to implement section 864 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283, January 1, 2021). Section 864 amends the Small Business Act to modify the maximum award price for manufacturing contracts to \$7 million for the 8(a), Women-Owned Small Business (WOSB), Historically Underutilized Business Zone (HUBZone), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs.

The maximum award price for manufacturing contracts at FAR 19.804-6(c)(2), 19.805-1(a)(2), 19.1306(a)(2)(i), 19.1406(a)(2)(i), and 19.1506(c)(1)(i) is subject to the inflationary adjustment required by 41 U.S.C. 1908. Section 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute (Service Contract Act), and trade agreements thresholds (see FAR 1.109).

FAR case 2019-013 (85 FR 62485), effective on October 1, 2020, made inflationary adjustments to, amongst others, the following: increased the \$7 million threshold at FAR 19.804-

6(c)(2), 19.805-1(a)(2), and 19.1306(a)(2)(i) to \$7.5 million; increased the \$6.5 million threshold at FAR 19.1406(a)(2)(i) to \$7 million; and increased the \$6.5 million threshold at FAR 19.1506(c)(1)(i) to \$7 million.

This final rule will harmonize the maximum award price threshold for manufacturing contracts amongst the socioeconomic programs by changing the current FAR maximum award price threshold for the 8(a) sole source, 8(a) competitive, and HUBZone sole source programs from \$7.5 million to the statutory amount of \$7 million. The maximum award price threshold for the WOSB and SDVOSB programs remains unchanged at the current threshold of \$7 million, which is consistent with section 864 of the NDAA for FY 2021.

II. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule will not have a significant cost or administrative impact on

contractors or offerors. A search of the Federal Procurement Data System revealed that there were no contracts awarded for 8(a) sole source, 8(a) competitive, or HUBZone sole source manufacturing contracts in the range of \$7 million to \$7.5 million between the date of the increase in the threshold to \$7.5 million (October 1, 2020) and April 2021.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses. This rule merely modifies a threshold in accordance with statute. This rule does not impose any new requirements on contracts at or below the SAT or for commercial items, including COTS items, except for the changes in the thresholds themselves.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to

review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

List of Subjects in 48 CFR Part 19

Government procurement.

William F. Clark,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

19.804-6 [Amended]

2. Amend section 19.804-6 by removing from paragraph (c) (2) the phrase "\$7.5 million" and adding "\$7 million" in its place.

19.805-1 [Amended]

3. Amend section 19.805-1 by removing from paragraph (a) (2) the phrase "\$7.5 million" and adding "\$7 million" in its place.

19.1306 [Amended]

4. Amend section 19.1306 by removing from paragraph (a) (2) (i) the phrase "\$7.5 million" and adding "\$7 million" in its place.